

Legal Update September 27, 2012—Tori Sundheim, Legal Intern

San Luis & Delta-Mendota Water Auth. v. Salazar, 760 F. Supp. 2d 855 (E.D. Cal. 2010)

- Oral Arguments were heard on Sept. 10, 2012 in the 9th Circuit Court of Appeals in Las Vegas, NV
 - http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000009546
- A decision will come out within three months to a year
- Appellant (NRDC, Bay Institute) 2011 WL 7006788
 - It's not the court's job to take a decision made by FWS, to hear testimony and then come up with a different standard.
 - Fall X2 is weaker than the previous standard.
 - Even if it was, the court did it wrong by balancing cost with the environment.
 - And the court was barred from issuing an injunction on issues already on appeal.
- Appellee (Water Users) 2012 WL 992915
 - FWS acted in agency "bad faith" for its Action for the BiOp
 - The court listened to testimony on both sides and did not abuse its discretion under the ESA or NEPA
 - Either way, Appellant's have failed to show "clearly erroneous" court findings and rely on discredited testimony to claim jeopardy.

Relevance to the Council: The court's ruling will likely change the level of deference California courts must give to agencies relying on "the best available science," and will shed light on what the legal battles may look like in the future when the government and water users must integrate science, water diversion and management systems while complying with Environmental demands.

We will continue to monitor the potential effects and implications of this decision